Settlement Agreements & Boilerplate Lisa Reel Schmidt Assistant Attorney General 515-281-4055 Ireelsc@dhs.state.ia.us

Please note that the opinions expressed in this presentation are those of the speaker and may not represent the position of the Attorney General's office.

Settlement Agreement

It's a contract!

Consent Judgments





Boilerplate **Typical General Provisions** Governing LawNotice Severability Amendments American lents Merger (Integration) Anti-Assignment Anti-Delegation Successors and Assigns Counterparts Waiver of Jury TrialApproval of Consent Decree **Consent Decree Approved** as to form and content.

Choice of Law - Governing Law Choice of Law • "The laws of lowa govern all matters with respect to this Agreement, including torts." • "The laws of lowa govern all matters arising under or relating to this Agreement." **Notice: Drafting Considerations** > Notice should allocate risk of nonreceipt. > Notice should designate methods of delivery. > Generally, require notice to be in writing. > Notice generally covers the entire agreement.

If any provision of this Ad Broadl ent is invalid or illegal, the rer provisions of the Agreement is invalid or illegal, the remaining provisions of the Agreement remain in full force only if the essential provisions	
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full force only if the essential provisions	
of the agreement for each party remain	
of the agreement for each party remain valid, binding and enforceable.	
Amendments	
The Parties may amend this	
Agreement only by the parties' written agreement that identifies	
itself as an amendment of this	
Agreement.	
Manager and the control of the contr	
Merger or Integration Clauses	
Merger provision ensures that contract will	
not be altered or supplemented through parole evidence.	
Section 14.1. Mers s Agreement constitutes the entities restanding between	
the parties.	

Merger: Fully integrated Agreements

- Defined: An agreement that is a "final" and "exclusive" expression of the parties agreement.
- Parole evidence: Evidence of prior or contemporaneous agreements cannot be introduced to <u>contradict or supplement</u> a term.

Merger: Fully Integrated Agreements

- To signal an agreement is a fully integrated agreement:
- a) Describe agreement being signed as a "final" and "exclusive" agreement.
- b) State that all prior negotiations and agreements are merged into the agreement being signed.

Merger: Partially Integrated Agreements

- Defined: An agreement that is the "final" but not "exclusive" expression of the parties' agreement.
- Parole evidence: Evidence of prior or contemporaneous agreements cannot be used to contradict a term, but prior negotiations and agreements are admissible to supplement, but not contradict a writing.

Merger or Integration Clauses

Section 14.1. Merger. This Agreement constitutes the final and exclusive agreement between the parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

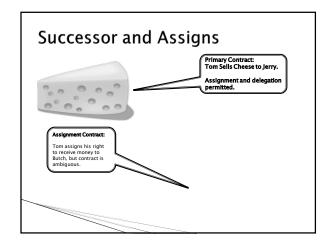
One-Pot Boilerplate

• INTEGRATED AGREMENT; SEVERABILITY. This Agreement consumes the entire understanding between the parties. No other prior or contemporaneous subject matter hereof and not embodied in this Agreement shall be of any force or effect. This Agreement shall not be modified except in writing signed by the parties. If any provision of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to the public policy, whether in whole or in any the remaining provisions shall not be affected by such holding.

Assignment and Delegation

- General provisions must deal with both assignment and delegation.
- Assignment of rights: A transfer of rights.
- Delegation of performance.

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Assignments: Drafting Considerations	
Considerations	
"Joe shall not assign his rights under	
the Agreement and any purported assignment is void."	
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Assignments: Drafting	
Considerations	
Section 12.1 Anti-Assignment. The parties shall not assign their rights under the Agreement and any purported assignment is void.	
Section 12.2 Assignments by Operation	
of Law or Change of Control. An assignment by operation of law or a Change of Control is deemed an assignment for purposes of Section	
12.1.	
Delegations:	
Drafting Considerations	
Section 13.1 Anti-Delegation. The	
parties shall not delegate their rights under the Agreement and any	
purported delegation is void.	



Successor and Assigns

- Without a successors and assigns clause in the Cheese Contract, a court would likely interpret the Assignment Contract as an assignment and delegation.
- With a successors and assigns clause, it's a



• To avoid being interpreted as Assignment and Delegation Clause:

"This Agreement binds and benefits the parties and their respective *permitted* successors and assigns."

Even Better!

- ▶ This Agreement binds and benefits
- (a) Jerry's Corporation, Inc. and its permitted successors and assigns; and
- (b) Tom and his heirs, executors, administrators, other legal representatives and permitted assigns.

Counterparts

• The parties may execute this Agreement in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

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